

STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION

William Shaw,	)	
as Trustee of Land Trust #8181	)	
-vs-	)	
Illinois Power Company	)	
	)	03-0675
Complaint as to Illinois Power Company's	)	
refusal to provide utility extensions until	)	
it receives a cash deposit violates	)	
Section 410.410(c)(1) and 500.310(c)(1)	)	
of Title 83 of the Illinois Administrative Code	)	
in Edwardsville, Illinois	)	

**INITIAL BRIEF**  
**OF WILLIAM SHAW, AS TRUSTEE OF LAND TRUST #8181**

Comes now, William Shaw, as Trustee of Land Trust #8181, by and through his attorneys Coffey Law Firm, Professional Corporation in the above-captioned proceeding.

**ISSUE**

Illinois Power Company's refusal to provide utility extensions until it receives a cash deposit violates Sections 410.410(c)(1) and 500.310(c)(1) of Title 83 of the Illinois Administrative Code.

**FACTUAL HISTORY**

In the summer of 2001, Complainant Shaw sought from Illinois Power Company the installation of underground gas and electric utilities in a residential subdivision named "Stonebridge" located in Edwardsville, Illinois. (*Direct Testimony of William Shaw pg. 1, lines 5-6; pg. 2, lines 16-17*). Complainant Shaw offered Illinois Power Company an irrevocable letter of credit to satisfy the Illinois Administrative Code's requirement for an "agreement" to

comply with the provisions relating to a utility extension deposit, specifically 83 ILAC 410.410(c)(1) and 83 ILAC 500.310(c)(1). (*Direct Testimony of William Shaw pg. 1 lines 9-13*).

On August 31, 2001 a letter was sent from The Bank of Edwardsville advising Illinois Power Company that it was ready to issue an irrevocable letter of credit for the Complainant's requested gas and electric utility extension. (*Shaw Exhibit A*). Illinois Power Company refused to accept the irrevocable letter of credit in satisfaction of the Illinois Administrative Code's requirement. (*Direct Testimony of William Shaw pg. 1 line 10 and Shaw Exhibit C*).

### **APPLICABLE LAW**

The relevant sections of the Illinois Administrative Code are clear that all that is required by an applicant to obtain the utility service of the type at issue in this matter is an "agreement" to either make a deposit or an "agreement" to comply with other provisions of the Code. The Illinois Administrative Code does not require the applicant to make an actual cash deposit to the utility provider.

Regarding electric service, the Illinois Administrative Code states:

".... The entity shall make the line extension upon agreement by the applicant to deposit with the entity..." 83 ILAC 410.410(c)(1) (emphasis added) (*Shaw Cross 2*).

Regarding gas service, the Illinois Administrative Code states:

"... the utility shall make the said extension upon agreement by the applicant... to comply..." 83 ILAC 500.310(c)(1) (emphasis added) (*Shaw Cross 4*).



Illinois Power Company's own Rules, Regulations, and Conditions Applying to Electric Service require only that the customer "pay or agree to pay" a deposit: (*IP Exhibit 2.1 pg.2. 2<sup>nd</sup> paragraph*) (emphasis added).

### ARGUMENT

Illinois Power Company's requirement of an up-front deposit exceeds the clear language of the Illinois Administrative Code ("Code") and Illinois Power Company's own Rules, Regulations, and Conditions Applying to Electric Service. All that is required of an applicant under the Code is an agreement to either make a deposit or an agreement to comply with other Code provisions (*see 83 ILAC 410.410(c)(1) and 500.310(c)(1) (emphasis added)*). Illinois Power Company's own Robert Zuege testified that all that is required of an applicant under 83 ILAC 410.410(c)(1) is an agreement of the applicant to make a deposit. (*Trial Transcript pg. 178, lines 17-19*).

There is no dispute that an irrevocable letter of credit meets the requirements of an agreement to make a deposit. Under examination, Illinois Power Company's Robert Zuege testified:

Q. "Mr. Zuege, what is your understanding of what an irrevocable letter of credit is?

A. My understanding for our purposes would be a letter that is submitted from a financial institution that indicates a payment will be made based on whatever the conditions of the letter are.

Q. Is it fair to say that it is an agreement that money will be paid upon certain conditions?

A. Yes."

(*Trial Transcript pages 177 lines 4-13*).

By Illinois Power Company's own admission, an irrevocable letter of credit meets the requirements of an agreement to make a deposit. Further, the Bank of Edwardsville's letter to



Illinois Power Company (*Shaw Exhibit A*) makes clear that through the irrevocable letter of credit, the required funds would be available to Illinois Power Company for the requested utility extensions deposit.

Illinois Power Company has no legitimate basis for refusing the irrevocable letter of credit. When examined Mr. Zuege testified that to his knowledge, neither the Illinois Administrative Code nor Illinois Power Company's own rules and regulations prohibit Illinois Power Company from accepting an irrevocable letter of credit.

Q. "Does the Illinois Administrative Code to your knowledge specifically prohibit Illinois Power Company from accepting an irrevocable letter of credit?"

A. No."

*(Trial Transcript pg. 183 lines 18-22).*

Q."Is there any authority in the Illinois Power's rules and regulations specifically authorizing the denial of irrevocable letters of credit.

A. Not to my knowledge."

*(Trial Transcript pg. 184 page 15-19).*

Illinois Power Company's Mr. Eagle acknowledges that paragraph 500.310(c)(1)(B) of the Illinois Administrative Code does not give any indication of when the deposit is to be made. (*Trial Transcript pg. 152 lines 3-6*). Presumably, if this Code provision was intended to require up-front deposits before construction begins, it would have indicated as much. Rather, the omission of any indication of when the deposit is to be made supports a plain reading of the Code that all the Code requires is an agreement to make a deposit. Despite no authority to do so in the Illinois Administrative Code, Illinois Power Company requires an applicant to pay the deposit before Illinois Power begins construction of the utility extension.

"Q. So from Illinois Power's perspective, for construction to begin, the applicant must pay?

A. That's correct."

*(Trial Testimony pg. 182 lines 11-17).*

Despite Illinois Power Company acknowledging that all that is required of an applicant is an agreement to make a deposit, and despite Illinois Power Company acknowledging that that an irrevocable letter of credit is an agreement to make a deposit, and despite Illinois Power Company acknowledging that it has no authority to deny an irrevocable letter of credit, Illinois Power Company refused to accept Complainant Shaw's irrevocable letter of credit.

### CONCLUSION

Complainant Shaw complied with the Illinois Administrative Code by agreeing to make a deposit. The agreement for the deposit was in the form of an irrevocable letter of credit. Despite having no legitimate basis to do so and in contradiction to the express direction in the Illinois Administrative Code, Illinois Power Company refused to accept Complainant Shaw's agreement to make a deposit. As such, Complainant Shaw respectfully requests the Commission to order Illinois Power Company to accept Mr. Shaw's Irrevocable Letter of Credit as satisfaction of the requirement to agree to provide a deposit and order Illinois Power Company to build the requested utility extensions without delay.

Respectfully submitted,

  
John McCracken  
Attorney for Complainant Shaw

John McCracken  
ARDC # 06243455  
Coffey Law Firm, P.C.  
125 N. Buchanan  
P.O. Box 247  
Edwardsville, IL 62025  
Phone: 618-656-2244  
Fax: 618-656-1307